

This letter discusses documentation issues regarding government exemptions, drop shipments, resales, and exports. See 86 Ill. Adm. Code Part 130. (This is a GIL.)

April 27, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 20, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is a wholesale distributor of construction and repair and maintenance-related products to various customers, including contractors.

Please provide guidance regarding the documentation a seller is required to acquire when making a sale in the different scenarios described below. When responding, please answer each question individually for ease of comprehension.

Government exemptions:

Title 86, Sec. 130.2080 indicates that a retailer may accept a U.S. Government card as documentation for exemption in lieu of an 'E' number. In addition to reviewing this regulation, I have also reviewed Illinois Administrative Code, Section 130.A. and viewed the examples of Tax Exemption cards.

1. In case of an audit, what documentation must a vendor provide to an auditor for a sale made to a government entity with a government card?
2. Are we required to obtain a copy of the card?

Drop Shipments:

Title 86, Sec. 130.225 indicates that 'certifications from purchasers on Certificates of Resale in lieu of resale numbers that described the drop-shipment situation and the fact that purchasers have no contact with Illinois that would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided.' Furthermore, the regulation states that 'the risk run by companies in accepting such a certification...is that an Illinois auditor is much more likely to go behind a Certificate of Resale that does not contain a valid resale number and require that more information be provided by companies as evidence that the particular sale was, in fact, a sale for resale.'

1. Does the regulation above infer that a certification on the certificate of resale describing the drop-shipment situation and the fact that the purchaser has no contact with Illinois that would require the purchaser to be registered and that they choose not to obtain resale number not relieve the seller from liability after obtaining such certification from the customer?
2. What additional information should the seller obtain from the purchaser at the time of sale (other than a resale and registration number)?

Resales:

Illinois Administrative Code, Section 130.1405 indicates that it is the responsibility of a seller to obtain a certificate of resale when making a sale for resale. This code also indicates that the resale certificate must include the seller's name and address, the purchaser's name and address, a description of the items being purchased, signature, and in the case of a sale to an out-of-state purchaser, a certification of resale to out-of-state purchaser. The 'certification of resale to out-of-state purchaser' is defined as 'a statement that the purchaser is an out-of-state purchaser who will sell only to purchasers located outside the State of Illinois.'

1. Will the completion of form CRT-61, Certificate of Resale, by our customer suffice the 'certification of resale to out-of-state purchaser' requirement set forth in the IL Code Sec. 130-1405?
2. If yes to #1 above, is proof of out-of-state registration required?
3. If yes to #2 above, what proof of out-of-state registration is acceptable? Will the out-of-state registration number be sufficient?
4. In lieu of form CRT-61, is an out-of-state resale certificate or registration certificate sufficient to document a sale for resale to an out-of-state purchaser?

Exports:

Illinois Administrative Code, Title 86, Section 130.605, states that 'retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales.'

1. What documentation should the seller obtain from the purchaser when making a sale and delivering the goods to a freight forwarder at the request of the purchaser?

Manufacturing Exemptions:

Illinois Administrative Code, Title 86, Section 130.330(g)(4), states that 'in the case of a vendor who makes sales of qualifying machinery or equipment to a contractor who will incorporate it into real estate so that he, the contractor, would be the taxable user, the purchasing contractor should provide the vendor with a certification that the machinery or equipment will be transferred to a manufacturer as manufacturing machinery or equipment in the performance of a construction contract for the manufacturer. The purchasing contractor should include the manufacturer's name and registration number on the certification when claiming the exemption.'

1. Can we accept the Machinery and Equipment Exemption Certificate, Form ST-587, instead of the certification described above?
2. If yes to #1 above, can the exemption certificate identify the contractor as the seller and the manufacturer as the purchaser or must the certificate identify the vendor as the seller and the contractor as the purchaser?
3. If the contractor can be identified as the seller, is the contractor required to provide an IBT number?
4. If we cannot accept the Machinery and Equipment Exemption Certificate, Form ST-587, instead of the certification described above, is the Machinery and Equipment Exemption Certificate, Form ST-587, required in addition to the certification above?
5. Is the Multijurisdiction certificate acceptable to document manufacturing exemptions in lieu of the Machinery and Equipment Exemption Certificate, Form ST-587?

Contractors:

Illinois Administrative Code, Title 86, Section 130.2075, indicates that sales of materials to construction contractors for incorporation into real estate owned by exclusively not-for-profit organizations or for government bodies are exempt from Retailers' Occupation Tax and Use tax. Furthermore, Sec. 130.2075(d)(4) states that 'a supplier claiming exemption hereunder shall have among his records a certification from the purchasing contractor stating that his purchases are for conversion into real estate under a contract with a church, charity, school or governmental body, identifying the church, charity, school or governmental body that is involved by name and address and stating on what date his contract was entered into. The supplier shall also have among his records the active exemption number issued by the Department to the organization for which the purchasing contractor is acting.'

1. Can you provide more detail as to what forms of 'certification' would be acceptable under audit?

2. In the past, I contacted your Tax Payer Assistance line (800) 732-8866, and the tax advisor suggested that we obtain a copy of the contract between the contractor and the nonprofit entity. However, many contractors are hesitant to provide a copy of their contract since they regard this as confidential information. Is a copy of the contract REQUIRED?
3. Would a **letter** from the contractor 'stating that his purchases are for conversion into real estate under a contract with a church, charity, school or governmental body, identifying the church, charity, school or governmental body that is involved by name and address and stating on what date his contract was entered into' be sufficient to satisfy this certification requirement in case of an audit? This letter would also include the active exemption number issued by the Department to the organization for which the purchasing contractor is acting.

Your prompt response to these questions will be greatly appreciated. Please feel free to contact me should you have any questions or require clarification on any of the questions posed above.

DEPARTMENT'S RESPONSE

Government exemptions:

Under the Retailers' Occupation Tax and Use Tax, sellers required to collect tax must either charge tax or document an exemption when they make deliveries in Illinois. Sales to exempt organizations, such as the U.S. Government, must be documented in order to be exempt.

In order to make a tax-exempt purchase, governmental bodies must provide the retailer with an active exemption identification number issued by the Department or present a U.S. Government Bank Card. See 86 Ill. Adm. Code 130.2080, "Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel."

When making a purchase, the holder of the card presents it to the retailer, who records the card number or makes a copy of the card instead of collecting tax. Only sales of tangible personal property invoiced directly to the governmental body are exempt. Sales made to individual government employees who will be reimbursed by the government are subject to tax.

Drop shipments:

Including a registration or resale number from purchasers on certificates of resale is the preferred method for documenting that purchases are purchases for resale. However, certifications from purchasers on certificates of resale in lieu of resale numbers which describe the drop-shipment situation and the fact that the purchaser has no contact with Illinois which would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that the particular sale is a sale for resale. This is the case despite the fact that no registration number or resale number is provided. The risk run by the seller in accepting such a certification and the risk run by the purchaser in providing such a certification is that an Illinois auditor is more likely to go behind a certificate of resale which does not contain a valid resale number and require that more information be provided by the seller as evidence that the particular sale was, in fact a sale for resale. There is nothing wrong with this procedure, it is just more likely that an auditor will go behind a certificate of

resale that does not contain a valid resale number and require that more information be provided by the seller as evidence that the particular sale was in fact a sale for resale.

We refer you to the Department's regulations at 86 Ill. Adm. Code 130.225 regarding Drop Shipments and 86 Ill. Adm. Code 130.1405 regarding Certificates of Resale for further information.

Resales:

A properly completed form CRT-61 will meet the requirements for a Certificate of Resale set forth in 86 Ill. Adm. Code 130.1405. As stated in the instructions for line 5 of this form, a statement by the purchaser that property will be sold for resale will not be accepted by the Department without supporting evidence such as proof of out-of-state registration.

An out-of-state registration certificate number may be used as proof of out-of-state registration.

An out-of-state resale certificate or registration certificate will not suffice as a resale certificate in Illinois unless it includes all the information required under 86 Ill. Adm. Code 130.1405.

Exports:

The Department's regulation regarding Sales of Property Originating in Illinois, 86 Ill. Adm. Code 130.605(c) provides that tax does not apply to gross receipts from sales in which the seller either by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply.

As provided in Section 130.605(e), to establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this State to a point outside this State under the terms of an agreement with the purchaser, the seller will be required to retain in his records, to support deductions taken on his tax returns proof that satisfies the Department that there was an agreement and a bona fide delivery outside this State of the property that is sold. The most acceptable proof of this fact will be:

- 1) If shipped by common carrier, a waybill or bill of lading requiring delivery outside this State;
- 2) if sent by mail, an authorized receipt from the United States Post Office Department for articles sent by registered mail, parcel post, ordinary mail or otherwise, showing the name of the addressee, the point outside Illinois to which the property is mailed and the date of the mailing; if the receipt does not comply with these requirements, other supporting evidence will be required;
- 3) if sent by seller's own transportation equipment, a trip sheet signed by the person to whom the goods were delivered outside this State; or, in lieu thereof, an affidavit signed by the purchaser or his representative, showing the name and address of the seller, the name and address of the purchaser and the time and place of the delivery outside Illinois by the seller; together with other supporting data as required by Section 130.810 of this Part. (86 Ill. Adm. Code 130.810)

Please note that under Section 130.605(f), retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. However, there is no exemption for property delivered in Illinois to foreign vessels. If foreign vessels purchase items of tangible personal property from Illinois retailers and have those items delivered to the vessels in an Illinois port, the sale is made in Illinois, the purchaser takes possession of the items in Illinois, and therefore, the sale is taxable.

For further information on sales tax topics, please see the Department's letter rulings. These letter rulings may be found on the Department's internet website under the heading of Laws/Regs/Rulings.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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